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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1956.

No. 79.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL
695, A. F. L.; INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 139, A. F. L.; and BUILDING & CON-
STRUCTION LABORERS UNION, LOCAL 392, A. F. L.,

Petitioners,

vs.

VOGT, INC.,
Respondent.

On Writ of Certiorari to the Supreme Court of Wisconsin.

PETITION FOR REHEARING.

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Now come Petitioners, International Brotherhood of Teamsters, Local 695, A. F. L.; International Union of Operating Engineers, Local 139, A. F. L.; and Building & Construction Laborers Union, Local 392, A. F. L., and respectfully move this Honorable Court to grant a rehearing in the above captioned case, in which the decision was entered on June 17th, 1957. In support of this Petition for Rehearing the Petitioners show to this Honorable Court as follows:

I. The Majority Opinion in Restating the Basic Principles Controlling a Claim of Constitutional Free Speech as Applied to Peaceful Picketing Failed to Give Adequate Consideration to the Sole Question Presented by the Instant Case.

Virtually the entire majority opinion in this case was devoted to a summary of prior decisions in which the question of protected free speech was raised in the context of picketing. The conclusion reached by the majority was that this "series of cases" gives "wide discretion to a state in the formulation of domestic policy . . ." (Slip Op. p. 10). However, at no point in the state courts did the Petitioners challenge the general proposition that a state has, under the decisions of this Court, "wide discretion" in the establishment of domestic policy insofar as it relates to peaceful picketing. And before this Court the Petitioners expressly eschewed any challenge "to legislative power . . ." (Pet. Br. p. 16).

The only question raised by the Petitioners in the state courts, and the sole issue presented in the proceedings before this Court, was whether the established facts, and the inferences reasonably drawn therefrom, permitted a finding that the picketing was for the unlawful purpose of compelling Vogt to interfere with his employees' right of self-organization. But, only one sentence in the majority opinion is devoted to this basic question, the Court concluding that "the circumstances set forth in the opinion of the Wisconsin Supreme Court afford a rational basis for the inference it drew concerning the purpose of the picketing" (Slip Op. p. 11).

We do not believe that this Court is prepared to hold, as did the Wisconsin Supreme Court, that the bare fact of solicitation justifies an inference of unlawful purpose. Nor can we believe that this Court is willing to sanction a finding that the public road was lightly travelled, for there is absolutely no evidence in the record to support

such a finding. But even assuming that such a fact were in the record, we do not believe that this Court is willing to hold that an inference of unlawful objective may be drawn from the limited size of the speaker's audience. These are the questions which were presented by the petition for certiorari and briefs in this case. No question of judicial or legislative power to formulate domestic policy was involved. Hence, the case is quite unlike **Pappas v. Stacey**, 151 Me. 36, 116 A. 2d 497.

Rather than being akin to the **Stacey** case, this cause presents questions like those presented in **Schwartz v. Board of Bar Examiners**, 1 L. Ed. 2d 796; and **Konigsberg v. State Bar of California**, 1 L. Ed. 2d 810. In both of those cases, this Court carefully examined and weighed the factual components of the record and re-evaluated the inferences which might be reasonably drawn from those established facts. The Court did not satisfy itself by a mere conclusionary statement that the inferences drawn were or were not reasonable. Cases presenting claims under the Bill of Rights, by their very nature, require such re-evaluations.

II. The Total Lack of Evidence Concerning the Movement of Traffic on the Public Road Upon Which the Picketing Occurred Coupled With the Subsequent Declaration by the Wisconsin Supreme Court That Such Facts Cannot Be Judicially Noticed Afford an Independent Ground Supporting This Motion for Rehearing.

The Wisconsin Supreme Court's finding of unlawful purpose was in large part based upon the assumption that the public road upon which the picketing occurred was lightly traveled (R. 36). As Petitioners pointed out (Pet. Br. p. 21n) and as Respondent's Counsel conceded in oral argument before this Court, there is no evidence in the record to support this finding. Subsequent to the submis-

sion of briefs in this case, the Wisconsin Supreme Court expressly held that such facts cannot be judicially noticed. **Jeffers v. Peoria-Rockford Bus Co.**, 274 Wis. 594, 80 N. W. 2d 785, 788. Hence, the Wisconsin Supreme Court's finding of unlawful purpose was bottomed upon a fact not in the record and of the kind which cannot be judicially noticed. The apparent failure of this Court to consider the total lack of evidence supporting the conclusion that the road was lightly traveled, coupled with the subsequent declaration by the Wisconsin Supreme Court that such facts may not be judicially noticed, afford an independent ground supporting this motion.

Both from the standpoint of a realistic evaluation of the facts and circumstances of this particular case and from the standpoint of affording a workable guide to be employed in the adjudication of similar cases we respectfully request that the Court grant a rehearing in order to afford an opportunity for a detailed reconsideration of the basis for the inferences drawn by the Wisconsin Supreme Court.

CONCLUSION.

For the foregoing reasons it is respectfully submitted that this Petition for Rehearing should be granted, and that the judgment of the Supreme Court of the State of Wisconsin should be reversed.

Respectfully submitted,

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Counsel for Petitioners.

This Petition for Rehearing is presented in good faith, and not for the purpose of delay.

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David Previant.